COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own motion as to the propriety of the rates and charges set forth in the following Standby Rate Tariffs: M.D.T.E. Nos. 136A and 137A, M.D.T.E. Nos. 237C, 238C, 239C, 254A and 255A; and M.D.T.E. Nos. 337A and 338A, filed on January 16, 2004, to become effective February 4, 2004, by Boston Edison Company, Cambridge Electric Light Company, and Commonwealth Electric Company d/b/a NSTAR Electric.	)	D.T.E. 03-121

MOTION TO DISMISS OF THE MEMBERS OF THE NE DG COALITION

American DG, Inc., Aegis Energy Services, Inc., OfficePower, L.L.C., Equity Office Properties Trust, Inc., Northern Power Systems, Inc., RealEnergy, Inc., Tecogen Inc., and Turbosteam Corporation (collectively, the "NE DG Coalition"), each hereby move the Department of Telecommunications and Energy ("the Department"), pursuant to 220 CMR 1.04(5) and 1.06(6)(e), to dismiss the January 16, 2004 filing of Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company ("NSTAR Electric") for the approval of tariffs designed to establish standby rates for large and medium commercial and industrial customers who have their own on-site generation facilities.[1]

In support of their motion, the members of the NE DG Coalition state that the proposed rates violate: (1) the legal standards for standby rates established by the Department in *Cambridge Electric Light Company and Massachusetts Institute of Technology*, D.P.U./D.T.E.

[1] The standby rate tariffs are as follows: Boston Edison Company, M.D.T.E. Nos. 136A and 137A (Rates-SB-1 and SB-2); Cambridge Electric Light Company, M.D.T.E. Nos. 237C, 238C, 239C, 254A and 255A (Rates SB-1, MS-1, SS-1, SB-2 and SB-3); and Commonwealth Electric Company, M.D.T.E. Nos. 337A and 338A (Rates SB-1 and SB-2).

94-101/95-36 (1995) ("*Cambridge*"); (2) the Department's regulations at 220 CMR 8.06; and (3) the regulations promulgated by the Federal Energy Regulatory Commission ("FERC") pursuant to the Public Utilities Regulatory Policy Act ("PURPA") at 16 CFR §292.305. The members of the NE DG Coalition further state that NSTAR Electric can prove no set of facts that would warrant approval of the proposed tariffs. Therefore, the Department should dismiss the filing.

In the alternative, the members of the NE DG Coalition request that the Department: (1) issue a finding that NSTAR Electric's filing is not a proper tariff filing; and (2) consider the filing as a petition for a generic investigation of standby rates pursuant to the Department's *Order Opening Investigation Into Distributed Generation*, D.T.E. 02-38, at 2 (June 13, 2002).

In support of their motion, the members of the NE DG Coalition also make reference to the Comments of the Members of the NE DG Coalition, which are to be incorporated herein by reference. *220 CMR 1.10(3).*

STANDARD OF REVIEW

Department regulation 220 CMR 1.06(6)(e) permits a party to move for dismissal "as to all issues or any issue" in a proceeding, at any time, after the submission of an initial filing. The Department standard for ruling on a motion to dismiss requires the moving party to show that the petitioner is not entitled to relief under any statement of facts that the petitioner could prove in support of its petition. *Commonwealth Electric Company, et al.,* D.T.E. 03-47, at 6 (August 7, 2003); *Cambridge* at 9-10; *Riverside Steam & Electric Company* D.P.U./D.T.E. 88-123 at 26-27 (1988). In determining whether to grant a motion to dismiss, the Department takes the assertions of fact included in the filing as true and construes them in favor of the non-moving party. *Id.*

The Department grants dismissal if it appears that the petitioner would not be entitled to relief under any statement of facts that could be proven in support of its petition. Id. *See Massachusetts Outdoor Advertising Council v. Outdoor Advertising Board,* 9 Mass. App. Ct, 775, 783-786 (1980) *(Administrative agency may properly dismiss a filing if the filing shows conclusively that the absence of a hearing could not affect the decision.).* Pursuant to this standard, the Department dismisses summarily filings that are "either patently deficient in form or a nullity in substance." *Massachusetts Electric Company,* D.P.U./D.T.E. 19257, at 4 (1977); *Municipal Light Boards v. Federal Power Commission,* 450 F 2d. 1341, 1345 (DC Circuit 1971); *cert. denied,* 405 U.S. 989 (1972); *Gas Company of Mexico,* 24 PUR 4th 635, 637 (N.M.P.S.C. 1978).

The Department also dismisses (1) filings that seek to relitigate issues which have been fully litigated before the Department, *New England Telephone Company,* D.P.U./D.T.E. 92-176 (October 16, 1991) (Order On Motion To Dismiss); and (2) filings that seek to implement specific tariffs while the Department is still considering those tariffs as part of a broader generic investigation. *New England Telephone and Telegraph*, D.P.U../D.T.E. 85-85 (October 3, 1985).

ARGUMENT

NSTAR Electric's proposed rates violate the legal standards for standby rates established by the Department in *Cambridge* and state and federal regulations governing standby rates. The proposed standby rates are deficient as a matter of law because there is no set of facts that NSTAR Electric could prove that would make the proposed standby rates lawful. Accordingly, the Department should dismiss NSTAR Electric's filing.

I. THE PROPOSED RATES VIOLATE THE LEGAL STANDARDS FOR STANDBY RATES ESTABLISHED BY THE DEPARTMENT.

In *Cambridge*, the Department established legal standards for standby, maintenance and supplemental rates. *Cambridge* at 44-53. The proposed standby rates on their face violate those standards. Inexplicably, NSTAR Electric's witness asserts that "there is no Department precedent in this area", citing *Cambridge* at 47. Direct Testimony of Henry C. LaMontagne ("LaMontagne Testimony") at 7. Not only did *Cambridge* establish clear precedent for standby rates, but also those standards are legally binding on Cambridge Electric Light Company and Boston Edison Company, who were parties to the adjudicatory proceeding.[2] *Tuper v. North Adams Ambulance Service, Inc.,* 428 Mass. 132, 135 (1998) (final order of an administrative agency, from which no appeal has been taken or for which the time for appeal has expired, precludes relitigation of the same issues between the same parties.); *Stowe v. Bologna,* 415 Mass. 20, 22 (1993). In *New England Telephone,* D.P.U./D.T.E. 92-176, at 4 (October 16, 1992), the Department dismissed a complaint because it sought to relitigate issues addressed in a prior proceeding. In this case, NSTAR Electric seeks to relitigate standards for standby rates decided in *Cambridge*. Accordingly, the Department should dismiss the filing.

A. The Proposed Standby Rates Are Unlawfully Based On Contract Demand.

NSTAR's proposed standby rates assess charges on the basis of a contract demand, as opposed to actual demand. LaMontagne Testimony at 18. In *Cambridge*, the Department

[2] The *Cambridge* decision was appealed to the Supreme Judicial Court on other grounds. No party appealed the rates set by the Department. *Massachusetts Institute of Technology v. Department of Public Utilities*, 425 Mass.

rejected contract demand as the basis for standby rate charges. *Cambridge* at 47-48. Charges based on contract demand constitute a demand ratchet. *Id.* at 47. The Department has a long standing precedent against demand ratchets because "they distort incentives to conserve and could unfairly impose higher costs on certain customers." *Id.* at 47, *citing Massachusetts Electric Company*, D.P.U./D.T.E. 92-78, at 188 (1992); *Western Massachusetts Electric Company*, D.P.U./D.T.E. 86-280, at 196 (1987); *Western Massachusetts Electric Company*, D.P.U./D.T.E. 84-25, at 199 (1984).

The Department further held that in the absence of the standby class specific load data, there is no evidence that assessing standby charges on the basis of actual demand would cause under recovery of distribution costs. *Cambridge* at 47-48. In fact, the use of contract demand is likely to cause over recovery of distribution costs because, unless the customer has exactly the same demand every month, the total annual billing demand will be less that 12 times the maximum monthly billing demand. *Id.* Accordingly, the Department denied the use of contract demand for standby rates and directed the use of actual monthly demand. *Id.*

NSTAR Electric has not offered a scintilla of evidence that would cause the Department to depart from its holding in *Cambridge* or its long standing precedent against demand ratchets. NSTAR Electric cannot prove any set of facts that would justify standby charges on the basis of a contract demand. NSTAR Electric has the burden of proof. Yet, NSTAR Electric offers no load data for standby rate customers in support of the proposed rates. Rather, NSTAR Electric uses the load data for its all requirements customers to design the proposed standby rates. LaMontagne Testimony at 24-25. That data show that even the maximum monthly demands of

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856, 866 n. 24 (1997).

all requirements customers vary from month to month. See e.g., Exhibit NSTAR-HCL-2. It defies logic to suggest that standby customers, who "take service only infrequently", will have exactly the same standby demand each and every month of the year. LaMontagne Testimony at 16.

NSTAR Electric can prove no set of facts in support of standby charges based on contract demand. Consequently, its filing should be dismissed.

B. **The Proposed Standby Rates Are Unlawfully Based On Rates Applicable to All Requirements Customers.**

The proposed standby rates are based on the rate schedules applicable to customers who purchase all of their electric requirements from either NSTAR Electric or a third party competitive supplier ("all-requirements customers"). LaMontagne Testimony at 16. In *Cambridge,* the Department rejected standby rates based on rates applicable to all-requirements customers because such rates are designed to recover the revenue requirements associated with the provision of all-requirements service, as opposed to a standby service. *Cambridge* at 46. In *Cambridge,* the Department further held that, in the absence of any cost or load data specific to standby service, (which data would enable the determination of a revenue requirement for standby customers), standby service rates should be based on marginal cost. *Id.* at 45-46.

In the face of *Cambridge*, NSTAR Electric's decision to base its standby rates on rates applicable to all-requirements customers renders its filing both "patently deficient in form and a nullity in substance". *Massachusetts Electric Company*, D.P.U/D.T.E. 19257 at 4. The Department's goal of earnings stability requires that rates be designed for each class of customers to produce revenues to cover the cost of serving that class. *Cambridge* at 45, *citing Western*

Massachusetts Electric Company, D.P.U/D.T.E. 86-280-A, at 177, 178 (1987). NSTAR Electric has not, and cannot, prove that the revenue requirement associated with the provision of service to various classes of all-requirements customers is equal to the revenue requirement associated with the provision of service to standby customers.

NSTAR Electric claims that its generally applicable rate schedules are appropriate "because standby customers cause costs to be incurred in the same manner as comparable non-standby customers." According to NSTAR Electric's witness, "the Company must plan for, build and have available distribution and transmission facilities need to meet the full demand of the [DG] customer." LaMontagne Testimony at 16.

These claims are patently incorrect. NSTAR Electric does not plan or build distribution facilities to serve standby customers. It plans and builds facilities to serve all-requirements customers. When an existing all-requirements customer installs on-site generation, there is no infrastructure investment. Any transmission or distribution facilities that might be needed to serve the standby customer are already in place. In other words, NSTAR Electric sized its transmission and distribution system to meet the load requirements placed on the system. On-site generation does not add a load burden to the NSTAR Electric transmission and distribution facilities. Indeed, by installing on-site generation, the standby customer removes load and thereby makes available existing facilities to serve other customers. This allows NSTAR Electric to defer or postpone additional capital investment in its transmission and distribution system.

The Department has a well-established policy that rate design be based on marginal cost, particularly when there is no cost or load data available to determine a revenue requirement.

Cambridge at 45, *citing Western Massachusetts Electric Company*, D.P.U./D.T.E. 86-280-A (1987); *Western Massachusetts Electric Company*, D.P.U./D.T.E. 85-270 (1986); *Boston Edison Company*, D.P.U./D.T.E. 85-266-A/85-271-A (1986). Accordingly, in *Cambridge*, the Department found that standby rates are appropriately based on full marginal costs. *Cambridge* at 45-46. There is nothing in NSTAR Electric's filing which could possibly persuade the Department to deviate from that finding. Since standby customers permit NSTAR Electric to defer capital investment in transmission and distribution facilities, the long run marginal cost of serving standby customers could even be negative or decremental, i.e., the installation of on-site generation confers a net benefit on NSTAR Electric's system.[3]

NSTAR Electric cannot prove a set of facts that would justify the application of all-requirements rates to standby customers. The Department should dismiss the filing.

C. **<u>The Proposed Rates Are Unlawfully Designed to Recover Local Transmission and Bulk Substation Costs Through A Demand Charge</u>.**

The NSTAR Electric proposed rates are designed to recover all transmission and distribution costs through a demand charge. NSTAR Electric has even eliminated variable charges that apply to all-requirements customers of comparable size by rolling those variable charges into the demand charge. LaMontagne Testimony at 23-25.

In *Cambridge*, the Department held that it is inappropriate to recover local transmission and bulk substation costs through a demand charge. *Cambridge* at 49. The Department found that, based on population density, the 13.8 kV distribution system and bulk substation facilities

[3] Additionally, the Electric Utility Restructuring Act prohibits distribution companies from charging exit fees to distributed generation customers, subject to certain exceptions not applicable here. G.L. c.164, §1G(g).

are relied upon by all customers and serve the same purpose as transmission facilities. Accordingly, it is inappropriate to recover the costs of those facilities through a demand charge. *Cambridge* at 48-49.

In this case, NSTAR Electric's witness recognizes that some "facilities needed to serve customers are to some extent shared with other customers and/or vary with usage." LaMontagne Testimony at 17. He claims, however, that is it not possible "to divide costs neatly" into fixed and variable components. *Id.* This claim is preposterous. NSTAR Electric could functionalize and identify variable costs in 1995. It can do so in 2004. Even if the process is not "neat", NSTAR Electric cannot demonstrate any set of facts that would show that a reasonable estimation of the variable costs of local transmission and distribution is not possible. Its filing should be dismissed.

II. <u>THE PROPOSED RATES VIOLATE THE DEPARTMENT'S REGULATIONS.</u>

The Department's regulations require NSTAR Electric to supply customers with a "Qualifying Facility or On-Site Generating Facility supplementary, back-up, maintenance, and interruptible power pursuant to 18 C.F.R. 292.305(b) under rate schedules applicable to all customers, regardless of whether they generate their own power." 220 CMR 8.06(1). If a customer with a Qualifying Facility or On-Site Generating Facility qualifies for service under the availability clause of more than one rate schedule, the regulations permit the customer to choose the rate schedule under which it will receive service. 220 CMR 8.06(2). Under the regulations, Qualifying Facility means "small power producers and cogenerators that meet the criteria specified by FERC in 18 C.F.R. §§292,203(a) and (b)." 220 CMR 8.02. On-Site Generating

Facility means "any plant or equipment that is used to produce, manufacture, or otherwise generate electricity and that is not a transmission facility and that has a design capacity of 60 kW or less. *Id*[4]

To the extent that the proposed rates are intended to supplant the availability to standby customers of rates applicable to all-requirements customers, they violate the Department's regulations. Under the Department's regulations, a customer with either a Qualifying Facility or On-Site Generating Facility has the right to take service under rates available to customers without such facilities. Moreover, the rates available to all-requirements customers are more favorable than the proposed rates.

A. Standby Service

Given the choice that the regulations require, a rationally economic standby customer will always choose the rates available to all-requirements customers over the proposed rates because the all-requirements rates do not contain punitive demand ratchets. See e.g. Boston Edison Company Rates G-2, G-3, T-1 and T-2. Demand charges under all-requirements rates are assessed on a monthly, as-used basis. Unlike the proposed standby rates, the all-requirements rates do not recover all costs through a fixed demand charge. The all-requirements rates include both fixed and variable charges. Additionally, the rates available to all-requirements customers offer a substantial discount for peak demand recorded during off-peak hours. Because no

[4] Admittedly, not all on-site generation is either a Qualifying Facility or an On-Site Generating Facility. However, the members of the NE DG Coalition submit that it would be poor policy (and perhaps unduly discriminatory) to establish distribution service rates for Qualifying Facilities that are different from the rates for non-Qualifying Facilities because both types of facilities have similar service characteristics. For example, both types of facilities have scheduled and unscheduled outages that require maintenance and standby distribution service from the local distribution company.

customer would choose the proposed rates over the existing rates, the proposed rates are a nullity in substance. The proposed standby rates should be dismissed.

B. Interruptible Service

Although NSTAR Electric does not propose a specific rate for interruptible service, its witness describes the terms under which NSTAR Electric would provide interruptible service to customers with on-site generation. LaMontagne Testimony at 26-27. According to that testimony, NSTAR Electric "would be willing to enter into a contract for non-firm, interruptible service at a lower price." *Id.* at 26. Specifically, "the customer would be billed a customer charge only and then billed on an 'as-used' basis under the otherwise applicable tariff for any service actually taken. There would be no contract demand charge." *Id.* at 26-27.

NSTAR Electric's offer to provide interruptible service is not only illusory, but also violates the Department's regulations. First, NSTAR Electric offers to provide "non-firm, interruptible" service to customers with on-site generation at the same rate it charges to provide firm service to all other customers. Such a rate fails to recognize that, unlike a firm customer, an interruptible customer does not impose any demand requirements on NSTAR Electric's system. At most, an interruptible rate should recover only the variable costs of providing service, not the full fixed demand charges applicable to a firm customer. By its very definition, an interruptible customer can be interrupted.

Second, NSTAR Electric's interruptible rate would require the customer to request standby service in advance. NSTAR Electric would then have a period of time to respond as to whether service is available. No advance notice is required from firm customers. Yet, firm customers pay the same charges as would customers under the proposed interruptible rate. Further, interruptible service is generally available without advance notice from the customer. It is NSTAR Electric that is required to notify the customer if it wishes to interrupt service. Even then, the customer has the choice of interrupting service or incurring a penalty for failure to interrupt. See e.g. Cambridge Electric Light Company, Rate I-1.

Like the proposed standby rate, the proposed interruptible rate is less favorable than the rates available to customers without on-site generation. Under the Department's regulations, customers with on-site generation have the right to take service under the rates available to customers without on-site generation. Since the rates available to all-requirements customers are more favorable than the proposed rates, no customer with on-site generation would choose the proposed rates.

To the extent the proposed rates are intended to deny customers with on-site generation the right to take service under the rates available to all-requirements customers, the proposed rates violate the Department's regulations. To the extent the proposed rates are intended as an additional service offering, they are a nullity in substance because no customer would elect them. In either case, there is sufficient cause for the Department to dismiss the filing.

III. <u>THE PROPOSED RATES VIOLATE FEDERAL REGULATIONS.</u>

Regulations promulgated by the FERC establish legal standards for standby and maintenance rates for Qualifying Facilities.[5] 18 C.F.R. §292.305(c). The NSTAR Electric proposed rates violate those standards. Consequently, the Department should not approve

[5] These federal standards should, as a matter of policy, apply to non-Qualifying Facilities, as well. See note 4, *supra*..

Massachusetts rates which are not consistent with, but are violative of federal standards. The NSTAR Electric proposed rates should be dismissed.

A. Standby Rates

FERC regulation 18 C.F.R. §292.305(c)(1) provides that rates for standby service:

> (1) Shall not be based upon an assumption (unless supported by factual data) that forced outages or other reductions in electric output by all qualifying facilities on an electric utility's system will occur simultaneously, or during the system peak, or both;

Under this regulation, rates for standby service may not be based on an assumption that all customers with on-site generation will require standby service at the same time, or at the time of system peak. The NSTAR Electric proposed rates fail this test. First, the NSTAR Electric proposed rates are based on the rates for all-requirements customers. The demands of all-requirements customers are driven by weather and work day regime. As a result, the demands of all-requirements customer tend to occur simultaneously and at the time of system peak. In contrast, the demand for standby service is driven by equipment outages, which may occur at any time. Second, the proposed standby rates impose demand charges based on a contract demand. The use of a contract demand implicitly assumes not only that all standby customers will require standby service simultaneously, but also that all standby customers will require standby service at the time of system peak. NSTAR Electric cannot prove that standby customers will demand service simultaneously or at the time of system peak. The NSTAR Electric filing should be dismissed.

B. Maintenance Rates

FERC regulation 18 C.F.R. §292.305(c)(2) requires that maintenance rates:

> (2) Shall take into account the extent to which scheduled outages of the qualifying facilities can be usefully coordinated with scheduled outages of the utility's facilities.

This regulation requires maintenance rates that take into account the ability to coordinate scheduled maintenance. NSTAR Electric does not propose a rate for maintenance service. Instead, it proposes, without explanation, to close an existing maintenance rate. Cambridge Electric Light Company, Rate MS-1.

The proposal to close the existing maintenance rate violates the FERC regulation. If the maintenance rate is closed, maintenance service will be available only through the rates for all-requirements customers. All-requirements rates do not take into account the ability to schedule maintenance.

There is no doubt that maintenance scheduling can be coordinated and accounted for in rates. In *Cambridge*, the Department found that company's capacity requirements would not be impacted by maintenance service, which occurred during the off-peak months (February through June and September through November) or during the off-peak hours of the peak months. *Cambridge* at 52. The Department approved a maintenance rate that takes into account the coordination of maintenance activities between on-site generation and the company's facilities. Thus, Rate MS-1 does not contain a distribution capacity charge because maintenance service under Rate MS-1 does not impact the company's capacity requirement. *Id.*

The NSTAR Electric proposed rates violate federal regulations and the Department should summarily dismiss them.

ALTERNATIVE RELIEF

In D.T.E. 02-38, the Department opened an investigation into distributed generation. *Order Opening Investigation Into Distributed Generation*, D.T.E. 02-38 (June 13, 2002). The Department identified three issues for the initial phase of the investigation: (1) the development of interconnection standards; (2) the appropriate method for calculating standby and other rates associated with distributed generation; and (3) the role of distributed generation in resource planning. *Id.* at 2.

In D.T.E. 02-38-A, the Department established a distributed generation collaborative forum to formulate interconnection standards. *Order Establishing A Distributed Generation Collaborative Forum*, at 2-3 (October 3, 2002). The Department did not determine the manner or scope of the initiatives related to the remaining distributed generation issues, including the appropriate method for calculating standby and other rates.

In *New England Telephone and Telegraph,* D.P.U./D.T.E. 85-85 (October 3, 1985), the company filed tariff revisions which would remove restrictions on the sale and resale of IntraLATA services. The Attorney General moved to dismiss the filing on the grounds that it was premature because the Department was still examining general policy issues related to IntraLATA competition in a generic docket. *Id.* at 1-2. The Department reasoned that a "decision on the resale and sharing of IntraLATA service must be preceded by general policy decisions on the issue of IntraLATA competition. If the Department were to allow the instant filing to go into effect, it would be, *de facto*, approving IntraLATA competition …." *Id.* at 5-6. The Department determined that the proposed tariff revision was unnecessary and that the broader policy issues should be addressed before the implementation of specific tariff changes.

Id. at 6.

The Department should apply the same reasoning in this case. Since the Department is currently considering the appropriate method for calculating standby and other rates in D.T.E. 02-38, it should not entertain NSTAR Electric's proposed standby rates. If the Department were to allow NSTAR Electric's proposed rates to go into effect, the Department would be *de facto* approving a method of calculating standby rates, before it has developed a complete record in D.T.E. 02-38.

If the Department determines not to dismiss NSTAR Electric's filing, the NE DG Coalition requests, in the alternative, that the Department (1) issue a finding that NSTAR Electric's filing is not a proper tariff filing; and (2) consider the filing as a petition for generic investigation of standby rates pursuant to the Department's order in D.T.E. 02-38. See *Interlocutory Order on Attorney General's Motion to Dismiss*, D.P.U./D.T.E. 94-50, at 14-17 (May 24, 1994) (affording similar alternative relief).

CONCLUSION

For the foregoing reasons, and those set forth in the Comments of the Members of the NE DG Coalition, the Department should dismiss NSTAR Electric's filing. In the alternative, the Department should (1) issue a finding that the filing is not a proper tariff filing and (2) treat the filing as a request for a generic investigation of standby rates pursuant to the Department's order in D.T.E. 02-38.

AMERICAN DG, INC.,
AEGIS ENERGY SERVICES, INC.,

EQUITY OFFICE PROPERTIES TRUST, INC.,
NORTHERN POWER SYSTEMS, INC.,
OFFICEPOWER, L.L.C.,
REALENERGY, INC.,
TECOGEN INC., and
TURBOSTEAM CORPORATION
(COLLECTIVELY, THE "NE DG COALITION")

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Dated: February 12, 2004

CERTIFICATE OF SERVICE

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 03-121

I hereby certify that I have this day served the foregoing Motion to Dismiss upon all parties of record in this proceeding in accordance with the requirements of 220 CMR 1.05(1) (Department's Rules of Practice and Procedure).

Dated at Boston this twelfth day of February, 2004

R M Freeman

Roger M. Freeman

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